RECORD AND BRIEFS

No. 16-460

IN THE
Supreme Court of the United States

STEPHANIE C. ARTIS,
Petitioner,
v.
DISTRICT OF COLUMBIA,
Respondent.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

REPLY ON PETITION FOR CERTIORARI

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REPLY IN SUPPORT OF PETITION

In its brief in opposition, the District of Columbia ("District") concedes that the D.C. Court of Appeals took one side of a three-to-two split among federal appellate courts and state courts of last resort on the interpretation of the tolling provision in 28 U.S.C. § 1367(d). The Sixth Circuit, along with the high courts of Minnesota and Maryland, has adopted the "suspension approach" to Section 1367(d); they have interpreted "tolled" to mean "suspended." The California Supreme Court, along with the court below, has rejected that reading in favor of the "grace period" approach; they have interpreted Section 1367(d) to provide 30 days beyond a dismissal for the plaintiff to refile.

The District's arguments for denying certiorari in the face of this acknowledged split of authority are insubstantial. This Court should grant the petition.

I. Further Percolation Is Unnecessary

The District suggests that this Court should deny the petition because "only a handful of courts have weighed in on the question presented." BIO 5. On the contrary, the California Supreme Court recently explained that there is "a deep and long-standing national divide over section 1367(d)'s true meaning. More than one dozen courts, in California and across the country, have weighed in; the statute has divided them virtually in half." *City of L.A. v. Cty. of Kern*, 328 P.3d 56, 61 (Cal. 2014); *see Turner v. Kight*, 957 A.2d 984, 989 (Md. 2008) (noting that the lower "courts have split on what the proper interpretation [of Section

1367(d)] should be" and that "learned appellate judges around the country cannot agree on the meaning and application" of the statute). The District acknowledges that there is already a three-to-two split on the question presented among federal appellate courts and state courts of last resort. *Compare In re Vertrue Inc. Mkg. & Sales Practices Litig.*, 719 F.3d 474, 480-81 (6th Cir. 2013) ("suspension" approach); *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 759-60 (Minn. 2010) (same); and *Turner*, 957 A.2d at 990 (same), *with Kern*, 328 P.3d at 65 ("grace period" approach); and Pet. App. 1a-11a (decision below) (same). This three-to-two split is more than sufficient to justify a grant of certiorari. The Court regularly grants certiorari in cases presenting one-to-one and two-to-one splits.[1] It should grant certiorari on the three-to-two split here.

Moreover, this issue arises frequently in intermediate state appellate courts. *See, e.g.*, *Williams v. Mann*, No. 34,180, 2016 WL 6081847, at *3 (N.M. Ct. App. Oct. 17, 2016) (adopting suspension approach); *Dahl v. Eckerd Family Youth Alts., Inc.*, 843 So. 2d 956, 958 (Fla. Dist. Ct. App. 2003) (adopting the grace period approach); *Gottschalk v. Woods*, 766 S.E.2d 130, 136-38 (Ga. Ct. App. 2014) (same); *Berke v. Buckley*

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[1] *See, e.g.*, *Ocasio v. United States*, 136 S. Ct. 1423 (2016) (one-to-one split); *Nichols v. United States*, 136 S. Ct. 1113 (2016) (one-to-one split); *Luis v. United States*, 136 S. Ct. 1083 (2016) (one-to-one split); *Menominee Indian Tribe of Wis. v. United States*, 136 S. Ct. 750 (2016) (one-to-one split); *Molina-Martinez v. United States*, 136 S. Ct. 1338 (2016) (two-to-one split); *Taylor v. United States*, 136 S. Ct. 2074 (2016) (two-to-one split); *Husky Int'l Elecs., Inc. v. Ritz*, 136 S. Ct. 1581 (2016) (two-to-one split).

Broad. Corp., 821 A.2d 118, 123-24 (N.J. Super. Ct. App. Div. 2003) (same); *Smith v. Erie Cty. Sheriff's Dep't*, 59 N.E.3d 725, 729-30 (Ohio Ct. App. 2016) (same). The District points out that these decisions are not binding statewide, BIO 7-8, but that is not the point; the point is that the sheer volume of decisions on this issue shows that it recurs frequently.[2]

Nor would further percolation yield any substantial benefit. The arguments on both sides of the split have been fully aired in reasoned decisions. The lower courts' opinions have laid out the competing interpretations of the statute and have extensively analyzed the merits of each approach. *See, e.g.*, *Turner*, 957 A.2d at 990 (noting that three "alternative interpretations [of Section 1367(d)] have been presented to the courts" and discussing each of these approaches); *Goodman*, 777 N.W.2d at 759 (same). The District emphasizes that, in adopting the "suspension" approach, the Maryland Court of Appeals deemed the statute ambiguous while the Minnesota Supreme Court characterized it as unambiguous. BIO 9. But any disagreement between these courts over the level of

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[2] Moreover, as Petitioner has explained, even the intermediate appellate court decisions have created practical problems. For example, the Sixth Circuit has adopted the "suspension" approach while an intermediate Ohio court has adopted the "grace period" approach. Pet. 15-16. Thus, the statute of limitations on state-law claims in Ohio varies depending on whether the claim is in federal or state court, which is an outcome this Court has long sought to avoid. The District has nothing to say regarding this state/federal split. Nor does the District dispute the possibility of forum-shopping between states, beyond the assertion that such forum-shopping would be "curious." BIO 11.

ambiguity in the statute enhances Petitioner's argument that there is a conflict of authority. The lower courts' divergent readings of the statute are a reason to grant the petition, not deny it.

Given that there is already a three-to-two split on this question, additional percolation will neither make the issue go away nor provide additional illumination. Only this Court can resolve the conflict.

II. The Question Presented Is Important

The District next argues that the question presented is insignificant, apparently on the ground that a plaintiff can avoid any time bar simply by filing her lawsuit more quickly. BIO 10-11. However, the same can be said in any case involving a statute of limitations dispute—the plaintiff can always avoid a time bar by filing more quickly. Yet this Court regularly hears statute of limitations cases because statutes of limitations are important and represent Congress's "weighing of competing claims of fairness—the need of plaintiffs for a reasonable amount of time within which to present their claims, and the right of defendants to be free from stale claims." *Castro v. Collecto, Inc.*, 634 F.3d 779, 784 (5th Cir. 2011) (quoting *United States v. Land*, 213 F.3d 830, 837 (5th Cir. 2000)).[3] If Congress in fact provided additional time to

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[3] *See, e.g., Green v. Brennan*, 136 S. Ct. 1769 (2016) (analyzing statute of limitations for contacting an Equal Employment Opportunity counselor); *McQuiggin v. Perkins*, 133 S. Ct. 1924 (2013) (discussing the interplay between AEDPA's statute of limitations for filing a federal habeas petition and actual innocence claims); *Gabelli v. SEC*, 133 S. Ct. 1216 (2013) (analyzing statute of limitations for the SEC to seek civil penalties); *United States v.*

refile a lawsuit, then litigants should have that additional time. It is no answer to say that Congress's intent is irrelevant because litigants will still have *some* time to refile under the District's position. The District also insists that the question presented is unimportant because filing a state-court complaint is ostensibly not "onerous." BIO 10. But even if this were true, it would be irrelevant; the Court frequently grants review in cases addressing the timeliness of less-than-onerous filings.[4] Whether it imposes onerous obligations or not, the interpretation of a federal limitations period should be clarified and not vary from jurisdiction to jurisdiction.

The District also argues that the petition should be denied because "[a]ny federal interest in standardizing a particular approach is minimal." BIO 3. This is a puzzling argument, because the question presented concerns the interpretation of a federal statute, and a comprehensively framed one at that. 28 U.S.C. § 1367(d) (providing the tolling rule for "any" dismissed state law claim). As this Court explained in *Jinks v. Richland County*, Congress enacted Section 1367(d) to "provid[e] a straightforward tolling rule" which "promotes fair and efficient operation of the federal courts and is therefore conducive to the administration

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Home Concrete & Supply, LLC, 132 S. Ct. 1836 (2012) (analyzing statute of limitations for the IRS to assess a deficiency against a taxpayer).

[4] *See, e.g., United States ex rel. Eisenstein v. City of New York*, 556 U.S. 928 (2009) (timeliness of notice of appeal); *Bowles v. Russell*, 551 U.S. 205 (2007) (same).

of justice." 538 U.S. 456, 463 (2003). This Court should not undermine Congress's decision to provide a uniform tolling rule by allowing different interpretations of federal law to govern in different jurisdictions. *Cf. Davis v. Virginian Ry. Co.*, 361 U.S. 354, 355 (1960) (noting that certiorari was granted because "the question posed was of importance in the uniform administration of [a] federal statute").

In the end, even the District must concede that "federal courts decline to exercise supplemental jurisdiction" with "frequency." BIO 10. In every one of those "frequen[t]" cases, the limitations period for the refiled state claims will turn on this Court's answer to the question presented. This Court should grant the petition to ensure that an orderly and uniform tolling rule applies throughout the nation.

III. The Decision Below Is Wrong

Petitioner's argument is simple: The word "tolled" means "suspended." *See Black's Law Dictionary* 1716 (10th ed. 2014) (defining a "tolling statute" as "[a] law that interrupts"—*i.e.*, suspends—"the running of a statute of limitations in certain situations"); *see also Chardon v. Fumero Soto*, 462 U.S. 650, 652 n.1 (1983) (construing "the word 'tolling' to mean that, during the relevant period, the statute of limitations ceases to run"). As this Court has previously observed in dicta, the effect of Section 1367(d) is to "toll the state statute of limitations for 30 days *in addition to however long the claim had been pending in federal court.*" *Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 542 (2002) (emphasis added).

The District provides little meaningful response. It unearths a few statutes related to taxation and military defense that use the word "suspended" rather than "tolled," BIO 13, but that does not justify giving the term "tolled" something other than its ordinary meaning. Indeed, the District cannot point to a single instance in which the word "tolled" has the meaning it would give it here.

Like the court below, the District also relies on a law review article that purports to show that the legislative history supports its position. BIO 13-14; Pet. App. 8a-9a. But legislative history and law review articles cannot change the meaning of clear statutory text, which is a point that this Court has emphasized in the particular context of the supplemental jurisdiction statute and the very House Report upon which the District relies. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568-70 (2005) (explaining that the "authoritative statement is the statutory text, not the legislative history or any other extrinsic material" and disclaiming reliance on Section 1367's "murky" legislative history).

Indeed, although the District's law review article claims that the legislative history shows that Congress intended to adopt an ALI recommendation in line with its position, the House Report contains no such statement. To the contrary, it states only that the purpose of Section 1367(d) is "to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations while a supplemental claim was pending in federal court." H.R. Rep. No. 101-734, at 30 (1990), *as reprinted in*

1990 U.S.C.C.A.N. 6860, 6876. That statement is supportive of Petitioner's position, and in any case it is not remotely sufficient to overcome the provision's plain text.

Finally, the District points to federalism concerns. BIO 14-15. But this Court has already rejected a federalism challenge to this precise statute. *See Jinks*, 538 U.S. at 462-65. Any federalism interest in making the federal tolling period slightly longer or shorter does not justify deviating from the statute's plain text.

IV. There Are No Vehicle Problems

This case is an excellent vehicle for resolving the conflict among the lower courts because the outcome in the court below turned entirely on the proper interpretation of Section 1367(d). *See* Pet App. 4a ("It is necessary, in order to answer the question presented in this case, to resolve the meaning of 'tolled' in 28 U.S.C. § 1367(d)."). Petitioner filed her federal suit with two years remaining on her limitations clock, and she filed her state suit fifty-nine days after dismissal of the federal suit. Pet App. 3a-4a. The District does not dispute that Petitioner's suit is timely under the "suspension" approach but untimely under the "grace period" approach.

In a footnote, the District characterizes this case as a "non-ideal vehicle" because the District is not a State. BIO 14 n.4. But, as the District acknowledges, the District is explicitly defined as a State under Section 1367. BIO 7 n.1, 14 n.4. The District correctly does not suggest that the interpretation of this statute depends on whether a case arises in the District or in a State.

Given that the statute treats States and the District identically, there is no vehicle problem in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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